

REMARKS

RCE Under Rule 114

Applicants do not understand and disagree with the contention in the Office Action that a CPA was filed. As indicated by applicants' office records, only an RCE (copy attached) with a one month extension fee was filed on January 26, 2007. In any event, this application is being treated as an RCE.

Claim Rejections

In the last Office Action, claims 9, 22 and 23 were rejected under §102(e) as being anticipated by the Ries U.S. Publication and claims 9-12 and 23-25 were rejected under §102(e) as being anticipated by the Frohwein Publication.

Rule 131 Declaration

Reconsideration and withdrawal of the rejection of all of the claims under Ries and Frohwein is requested in view of the enclosed Rule 131 Declaration Brian W. Brandner, one of the joint inventors of the subject application. As evidenced by the Brandner Declaration, the invention defined by the claims of this application was conceived in Canada and actually reduced to practice in the United States prior to the filing date of December 27, 2002 of the Ries Publication and prior to the effective filing date of January 31, 2003 of the Frohwein Publication.

Accordingly, Ries and Frohwein are not prior art references and should not be considered in determining the novelty and patentability of applicants' invention as defined by claims 9-12 and 22-25 and reconsideration and allowance thereof is requested.

Amended Claims

Claim 9 is Novel and Patentable

Both as set forth in the prior amendment and as further amended herein, claim 9 defines novel and patentable subject matter over Ries and Frohwein even if they were prior art references, which they are not, as well as the other references of record whether considered alone or in combination for at least the following reasons.

Claim 9 defines, among other things, a fuel tank having a shell with a polymeric outer layer and a vapor barrier layer of a different polymeric material, a separate fill nipple with inner and outer layers of a polymeric material and a vapor barrier layer of a different polymeric material, at least one layer of the shell and fill nipple polymeric materials welded together continuously around the opening, and a separate cover with an inner layer of a polymeric material welded to both the shell and the nipple and spanning the area of the attachment of the fill nipple to the shell and with a vapor layer of a different polymeric material.

Neither this specific construction and arrangement nor its significant practical advantages are disclosed, suggested or taught to skilled persons by Reis, Frohwein or any of the other references of record whether considered alone or in combination. Neither Reis nor Frohwein inherently has or discloses, suggests or teaches to skilled persons any separate cover at all, any separate cover having a vapor barrier layer, any separate cover with a polymeric layer welded to both the fill nipple and shell, nor any separate cover spanning the area of attachment of the fill nipple to the shell.

Accordingly, for at least these reasons, amended claim 9 defines novel and patentable subject matter and should be allowed.

Claims 10-12 & 22

Each of claims 10-12 and 22 is ultimately dependent on amended claim 9 and hence defines novel and patentable subject matter for at least the foregoing reasons and should be allowed.

Amended Claim 23

As amended, claim 23 defines a fuel tank having a shell of a first polymeric material with a vapor barrier layer of a different second polymeric material, a separate fill nipple with inner and outer layers of a polymeric material and a vapor barrier layer between them of a different polymeric material, the vapor barrier layer of the fill nipple overlies the vapor barrier layer of the shell over the entire extent of the overlap, and the adjacent polymeric materials of the nipple and shell are welded together to circumferentially continuously surround the opening of the shell.

Even if the Reis and Frohwein references were prior art, which they are not, neither these references nor any other references of record whether considered alone or in combination inherently have or discloses, suggests or teaches to skilled persons this specific construction and arrangement and its significant practical advantages. Accordingly, amended claim 23 defines novel and patentable subject matter and should be allowed.

Dependent Claims 24 and 25

Each of claims 24 and 25 is dependent on amended claim 23 and hence defines novel and patentable subject matter for at least the foregoing reasons and should be allowed.

New Claims 26 & 27

New independent claims 26 and 27 are somewhat broader than amended claims 9 and 23 respectively but nevertheless are believed to define novel and patentable subject matter for at least the foregoing reasons for which claims 9 and 23 respectively are believed to do so. Accordingly, new claims 26 and 27 should be allowed.

Conclusion

The newly cited Reis and Frohwein publications are not prior art references under §102(e) in view of the prior conception and actual reduction to practice of applicants' invention as evidenced by the accompanying Rule 131 Declaration of Brian W. Brander, one of the named joint inventors. Furthermore, even if the publications were prior art references, which they are not, all of the claims define novel and patentable subject matter over these references as well as the other references of record for at least the foregoing reasons and should be allowed. Therefore, reconsideration and allowance of amended claims 9-12 and 22-25, as well as new claims 26 and 27, is respectfully requested.

If, after considering this Response, the Examiner is of the view that any of the claims are not allowable, a telephone interview with applicants' undersigned attorney William Francis is requested so that immediate consideration can be given to any further amendments suggested by the Examiner or otherwise needed to place all of the claims in a condition for allowance. The Examiner is asked to either initiate or schedule this interview by telephoning William Francis at 248-689-3500, Ext. 153, who normally can be reached Monday through Friday between 9:00 A.M. and 5:00 P.M.

Our check for \$950.00 is enclosed to cover the fee for the two additional, independent claims (\$500.00) and the two months extension of time (\$450.00) in which to respond to this Office Action. If these fees as calculated by the Patent Office differ from the amount of this check, please charge any deficiency or credit any excess to our Deposit Account 50-0852.

Respectfully submitted,

Reising, Ethington, Barnes, Kisselle, P.C.

WHF:sal

Enclosures


Copy of RCE Form

\$950.00 check

Applicant Brian Brandner Resume

Rule 131 Declaration w/Exhibits 1, 2

By



Attorneys for Applicants

William H. Francis #25,335

Telephone (248) 689-3500, Ext 153

Facsimile (248) 689-4071